



Appeal Decision

Site visit made on 8 April 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal Ref: APP/U5360/C/23/3326029

26A Lampard Grove, Hackney, London N16 6XB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”).
 - The appeal is made by Mr Chaskel Berger of Bais Hamedrash Ohel Yakov Limited against an enforcement notice (“EN”) issued by the Council of the London Borough of Hackney.
 - The notice was issued on 19 June 2023.
 - The breach of planning control as alleged in the notice is “Without planning permission, the operational development of a structure comprising boundary wall and bin enclosure, gates and beams spanning the front yard, to the front of the Property”.
 - The requirements of the notice are to:
 1. Remove the beams, the boundary wall facing the street and the wall encompassing the waste bins to the front of the Property in its entirety including all of the 4 gates which have been installed; or
 2. Remove the beams and lower the boundary wall and piers so the height is the same as the front boundary wall of the adjacent Talmud Torah Chaim Meirim Wignitz School at 26 Lampard Grove. This wall is measured to have a height of 1.85 metres to the shoulder of the wall, with the piers (including capping) measured to be 2.1 metres tall. The 4 gates may be retained.
- And then:
3. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 4. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is: 6 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the EN is varied by:
 - In section 5. WHAT YOU ARE REQUIRED TO DO, the deletion of all of the words in criterion (2) and their replacement with the words, “*Remove the beams and lower the boundary wall and piers to the same height as the front boundary wall and piers of the adjacent Talmud Torah Chaim Meirim Wignitz School at 26 Lampard Grove*”.
2. Subject to the variation, the appeal is dismissed, the EN is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Matters Concerning the Notice

3. While the appellant has not advanced an appeal under ground (f), s176(1) of the 1990 Act allows me to vary the terms of the EN if I am satisfied that the correction or variation will not cause injustice to the parties.
4. The second requirement of the EN requires the boundary wall and piers to be lowered to the same height as the front boundary wall of the Talmud Torah Chaim Meirim Wiznitz School at 26 Lampard Grove. The height of the adjacent boundary wall and piers is then specified. However, the appellant disputes the stated heights.
5. A requirement to lower the boundary wall and piers to the same height as the boundary wall and piers at No 26 is clear to understand. Therefore, it is unnecessary to specify the heights. However, the wording of the requirement should be amended to be clear that the piers should be lowered to the height of No 26's piers, not the height of No 26's wall. Furthermore, it is not necessary for the requirement to state that the four gates may be retained and therefore, this should be deleted from the requirement. I am satisfied that the EN can be varied in this way without causing injustice.

Preliminary Matters

6. A revised National Planning Policy Framework has been published since the EN was issued. However, it does not raise any new issues that are determinative to the purposes of the appeal and therefore injustice to the parties does not arise.

The Appeal on Ground (a) and the Deemed Planning Application

7. An appeal under ground (a) is that planning permission should be granted for the matter alleged. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

8. Lampard Grove is a predominantly residential street. However, there are also a small number of non-residential uses including the appeal site that is used as a place of worship and the adjacent building that is used as a school. The buildings along the road are mixed in their character and appearance but are mainly sited behind a front garden/forecourt defined by a boundary wall. The boundary walls are constructed of a variety of materials and tend to be lower for the residential properties and higher for the non-residential properties.
9. A brick wall of between 2.2m-2.3m in height with brick piers of between 2.53m-2.6m in height have been constructed along the appeal site's front boundary, adjacent to the back edge of a narrow pavement. In between the piers are solid gates with a curved top. Pedestrian access to the side/rear/front of the building is gained via a path along one side of the forecourt that is bounded by a bin storage area and a gate that are of a lower height than the front boundary wall. Beams extend between four of the five piers and adjoin the building's front elevation.
10. The front boundary wall and piers at the appeal site are noticeably taller than those at No 26 and they extend for a considerable distance along the road. They are also significantly taller than other front boundary walls in the surrounding area. Due to their height, length and positioning along the back edge of a narrow pavement, they create an undue sense of enclosure and appear prominent and dominant when

viewed from the road. Consequently, they fail to respect the character and appearance of the surrounding area.

11. The beams are substantial in their length and girth. They are positioned above the height of the building's ground floor windows and extend the full width of the forecourt, attaching into the uppermost section of four of the five piers. Consequently, they are highly visible when travelling along the road. There is an absence of structures within the front gardens/forecourts in the surrounding area and as such, they appear alien and uncharacteristic.
12. The bin storage area and gates are similar in height to other walls that subdivide the front gardens/forecourts of adjacent properties. Consequently, they do not harm the character and appearance of the surrounding area. Furthermore, the requirements of the EN provide the appellant with an option to retain these elements of the development.
13. I acknowledge that the boundary wall provides increased security, and I do not doubt that this is a legitimate concern. However, I am not persuaded from the evidence before me that it is essential for the boundary wall and piers to be of such a height to provide the necessary security, particularly as the wall adjacent to the pedestrian access and gates are of a lower height. The requirements of the EN give the appellant the option to lower the height of the boundary wall and piers to match the height of the wall and piers at No 26. The evidence before me does not convince me that a boundary wall and piers of a matching height could not provide adequate security.
14. The appellant asserts that it would be undesirable to the character and appearance of the surrounding area for the development to be completely removed. However, this has not been substantiated with evidence. Furthermore, the requirements of the EN provide an option for the development to remain (with the exclusion of the beams and the lowering of the front boundary wall and piers). Therefore, it is not necessary for the development to be removed in its entirety.
15. I have been directed to a timber structure that was previously sited within the forecourt and it is asserted that it remained all year round. However, I am unclear whether planning permission had been obtained for this structure, or indeed whether it was required. Notwithstanding this, the structure appeared to be lower in height and did not include a front boundary wall and piers of the height now in-situ. Consequently, it is not directly comparable to the appeal development.
16. For the reasons given above, the development harms the character and appearance of the surrounding area. It conflicts with Policies D3 and D4 of the London Plan, adopted 2021 and Policy LP1 of the Hackney Local Plan 2033, adopted 2020 which, amongst other things, seek to ensure that development responds to local character and context, delivers high quality design, and provides active frontages.

Other Matters

17. I have been directed to Case Law¹ to demonstrate that enforcement action must be proportionate. The requirements of the EN provide the appellant with two options: (1) to remove the development in its entirety; or (2) to remove the beams and lower

¹ R v Leominster DC ex parte Potheary [1997] 3 PLR 91

the height of the front boundary wall and piers to match the height of the boundary wall and piers at No 26. This, in my opinion, is a proportionate response to the breach, with the second option directed towards only those aspects of the development the Council consider harm the character and appearance of the area.

18. The appeal site is used as a place of worship. The Public Sector Equality Duty ("PSED") contained in Section 149 of the Equality Act 2010 ("the 2010 Act") sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not. The 2010 Act sets out the relevant protected characteristics which include religion or belief. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles within Section 149 of the 2010 Act.
19. The negative impact of dismissing this appeal would arise from the removal of the beams that would prevent a temporary roof from being constructed during a seven-day religious festival, and the removal/lowering of the boundary wall and piers that are required for security purposes. However, it does not follow from the PSED that the appeal should succeed.
20. I have considered the requirement to provide a temporary roof structure during the festival. However, I am not convinced from the evidence before me that it could not be achieved by an alternative method of construction that does not necessitate the beams. I have discussed previously the effect of the EN's requirements on security and I am not persuaded that a boundary wall of a lower height would not be adequate. Consequently, my actions in this respect, and my decision on the appeal, are a proportionate response to the requirements of the 2010 Act and those of the plan led system.
21. The appellant asserts that the development does not have an unacceptable effect on the living conditions of the occupiers of neighbouring properties. However, this is a neutral matter.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

A Berry

INSPECTOR